

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 768 of 1985

with

CRIMINAL MISC.APPLICATION No 1745 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

and

Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

PUNABHAI S PARMAR

Appearance:

MR SP DAVE, Ld. APP for Petitioner
MR G RAMAKRISHNAN for Respondent No. 1

CORAM : MR.JUSTICE K.R.VYAS

and

MR.JUSTICE J.R.VORA

Date of decision: 21/09/2000

ORAL JUDGEMENT(Per: J.R. Vora, J.)

This appeal is filed against the acquittal order passed by Learned Additional Sessions Judge, Godhra in Session Case No.110/84 acquitting the present respondent

for the offence punishable under Section 302, 376 and 392 of the Indian Penal Code.

Brief facts leading to prosecution may be summarised as under:

The incident in question has occurred on 26th May, 1984 at Village Dadiapura, Taluka Halol, District Panchmahals. Victim deceased of the incident, Ramilaben aged about 12 years, was daughter of Andarsingh Raijibhai and nephew of P.W. No.2 Parvatsinh Raijibhai brother of Andarsingh, who lodged the complainant before the Police. The complainant, Parvatsinh Raijibhai Parmar had three sisters, one of them named Shantaben, residing at Village Dadiapura, who had married to one Ganpatbhai Gulab. The complainant, Parvatsinh Parmar belongs to Village Dhansar. Since Shantaben, sister of the complainant was to deliver a child, to assist Shantaben in household work, Ramilaben, daughter of the complainant, came to the house of Shantaben at Village Dadiapura from Dhansar and after delivery of the child, she stayed at Dadiapura for 15-20 days before the incident. On 26th of May, 1984, there was a marriage ceremony in the relation of the complainant, Parvatsinh and a friend of Ramilaben was to get married and, therefore, Ramilaben was expected to go to Village Dhansar from Dadiapura, but till evening Ramilaben did not reach Village Dhansar and therefore, her father and complainant Parvatbhai and other family members, in search, came to Village Dadiapura and enquired about Ramilaben from Shantaben and others. Shantaben said that Ramilaben left Dadiapura Village at about 12 in the noon, presumably to attend the marriage at Dhansar. Elder brother of the complainant, Amarsingh, who was also of Village Dadiapur was consulted and enquiry was made about Ramila. But nothing could be found on that day till night. So complainant Parvatbhai returned to his village Dhansar. On that day, late at night Shantaben P.W. No.3, aunt of Ramilaben wake up and went for natural call and she saw the dead body of Ramilaben in the Courtyard of Amarsingh. Father and uncle of Ramilaben were informed. In the morning through his wife, Parvatbhai, complainant, came to know that the dead body of Ramila was found from the Courtyard of Amarsinghji, who was elder brother of the complainant. With family members, complainant went to the Courtyard of Amarsingh at village Dadiapura, where he found the dead body of Ramila. The dead body, thereafter, was sent for post-mortem and a complaint before Halol Police Station was launched by Parvatbhai. Investigation started and on the third day of the investigation, a statement of one Baijiben Nanabhai, PW-5 Exb. 29 came to be recorded by

Investigating Officer. Baijiben, PW-5, said that on 26th at about noon she saw the accused raping and murdering Ramila. Accused was arrested and according to the Investigation, the ornaments i.e. nose-ring and waistband, which were on the body of Ramila were sold by the accused to one Dhansukhbhai Vallavdas, PW-6, goldsmith of Halol. At the instance of accused, as per the investigation, these two ornaments were recovered. Some blood spots were found in the house of the accused and a quilt and a sheet was also found in the house of the accused with blood stained marks, which were recovered during the investigation. A chargesheet came to be filed before the Learned Magistrate, Halol and the case, thereafter, was committed to Court of Sessions and was numbered as Sessions Case No.110/1984. Charges under Section 302, 376 and 392 of the I.P.C. were framed against the present respondent, who pleaded not guilty and the prosecution laid the evidence. After hearing both the sides at length, learned Additional Sessions Judge by his judgement and order dated 28th March, 1985 acquitted the accused from the above said charges framed against him and hence this acquittal appeal by the State, aggrieved by above said judgement of learned Additional Sessions Judge.

Learned APP, Mr. S.P. Dave for the State and Learned Advocate, Mr. G.Ramakrishnan for the respondent were heard at length.

After having heard the rival contentions and scrutinising the record of the case, it appears that as many as 11 witnesses were examined by the prosecution. Prosecution also relied upon documentary evidence as well.

The substantial issue, which would be required to be decided is as to whether the death of Ramila was homicidal and that whether she was raped before the death? From the record, it appears that the defense has no dispute about the fact that the death of Ramila was homicidal one and that she was raped before her death. The direct evidence in this regard is evidence of Dr.Rameshchandra K., PW-4, at Exb.26, who performed the autopsy of the dead body of Ramila on 28th May, 1984 at about 8a.m. in the morning. He confirmed that it was a dead body of 10 to 12 years old girl and according to the doctor, the cause of death was Asphyrial due to throttling, homicidal in nature. Dr. Rameshchandra K., PW4, found following external injuries on the body of Ramila:

"her eyes were open, and protrude fully while

cornea, tongue protrude, red blue between the teeth clinched on the tongue, blood fluid was coming from nostrils and both ears, body was swelled more than age due to decomposition, blue colour bristle, blood clots around the pubic and vagina. The face was puffy, cyanosed and with petechiae, neck swelling too much, swelling over the neck. The condition of the skin was blue cyanosed bruises all over the body, cuticles of skin being softened, peels off easily, bruises and abrasions become unrecognizable when cuticle is denuded. There was clotted blood present over external genitals, secondary sex character were not developed, breast were not developed, and also hairs, her labia majora was swollen and minora of vagina was ruptured up to anus. Anal canal protrude due to the decomposed body raped before death. I conclude that the deceased was raped before death. Her hymen was ruptured."

Dr. Ramshchandra K. also positively pointed out that Ramila was raped before she died. Therefore, from these evidence, the prosecution has sufficiently proved that the death of Ramila was homicidal and that she was raped before she died.

Now the question arises with regard to the involvement of the respondent in the above case. Prosecution mainly relies on three circumstances against the accused for proving the offence charged against him. Prosecution relies on the evidence of witness, Baijiben Nanabhai, PW-5 at Exb. 29. Prosecution also relies on the evidence of discovery of ornaments from the goldsmith of Halol. Prosecution thirdly relies upon the blood marks found in the house of the accused as well as quilt and a sheet with blood stained marks, which were also found from the house of the accused.

The evidence of witness, Baijiben Nanabhai, PW5 requires to be scrutinised thoroughly. In her deposition, she said that the incident occurred 8 to 9 months before her deposing. The name of her husband is Ambalal. On the northern side of her, house of one Ganpat Gulab is situated and on southern side, house of the accused is situated. She said that on the day of incident, she heard some cries from the house of the accused. She opened the door of the Courtyard of the accused and saw that the accused had mounted upon Ramila with her pants and underwear down half way. She said that the accused was raping Ramila and the hands of the accused were on the throat of Ramila. She further said

that the accused noticed her and threatened her that she should run away from his Courtyard and if she utters a word regarding this incident, then accused would beat her. Thereafter, she went to attend a marriage ceremony at some other village, where she came to know that the dead body of Ramila was recovered. She said that she did not narrate the incident, which she had seen, because of the threat given by the accused to her.

Appreciating the evidence of the eye-witness, the clear fact which surfaces is that the statement of this witness was recorded by the Police on the third day of the incident and she is the only eye-witness of the incident. Her cross-examination reveals that she had not uttered a word during these three days regarding the incident and on the third day when Police enquired from her, she said that she had seen the incident. She has said that Ganpat Gulab, husband of Shantaben and Shantaben are her next door neighbour and Ganpat is her nephew. In all probability what was expected from this witness is, had she really seen the incident, she would have narrated the incident to Shantaben, who was in her house for the whole day of the incident. Shantaben, PW-3, in her deposition at Exh. 25, specifically stated that on the day of incident, she was in her house. This witness i.e. Baijiben, neither informed anything to Shantaben, nor reported about the incident to anybody else till the third day. Only when the Police enquired from her about whether she knew anything about the incident she made a statement. The natural conduct of the witness is found doubtful. The excuse which she advances for not narrating the incident earlier appears not to be probable because on the third day, according to her deposition, when Police simply enquired, she narrated that she had witnessed the incident. If she was under threat by the accused for three days, then the threat continued and she would not have submitted before the Police that she had witnessed the incident. That leads us to believe that the excuse advanced by the witness for not reporting the incident for three days is a got up ground to give plausible explanation. Therefore, it clearly appears that the so-called eye witness, Baijiben is a planted witness, whose statement is recorded during the investigation after three days of the incident directly, when she had so many ample opportunity to narrate the incident to Shantaben or to Ganpat Gulab or to Parvatbhai, the complainant and uncle of Ramila, or even to Amarsingh, the other uncle of Ramila, from whose courtyard the dead body was found and she had not said anything. On the day of the incident, as per the deposition of this witness, the Police was in the

village. Not only that, the Police also visited her house, but on that day she did not narrate the incident to the Police, nor did she narrate the incident to the Police on the next day. There was obviously, under these circumstances, no reason to give the statement to the Police on the third day, that too, in pursuance of simple enquiry from the Police.

The complainant in his deposition clearly stated that on 26th in the evening when he went to Village Dadiasar he found Shantaben and Baijiben - this eye-witness together and both of them said that in the afternoon Ramilaben had gone to purchase threads. At that time also Baijiben saw Shantaben and on enquiry she stated to complainant as aforesaid, which denotes that it was doubtful whether she had actually seen the incident. Not only that, complainant side had motive against the accused which is revealed in the evidence of Shantaben P.W. No.3 Ex.25 and according to her accused had mortgaged some land to complainant and complainant had sold that land to someone else and sale money were not given by the complainant to the accused. There was dispute in this regard between the parties and, therefore, likelihood of framing the accused cannot be ruled out. Therefore, the Trial Court has rightly not placed reliance on the say of this witness. After careful scrutiny, we also found that this so-called eyewitness is got up witness or at least a doubtful witness, inspiring no confidence.

The second circumstance which is relied upon by the Prosecution is the recovery of the waistband and nose ring from a goldsmith of Halol Town, one Dhansukhbhai Vallavdas, PW-6, at Exb. 30. Dhansukhbhai Vallavdas has deposed that he knew the accused and on 26th May, 1984 the accused sold him a nose ring of gold and waistband of silver for which the accused was given of Rs.72/- by him. He has said that thereafter the Police and accused came to his shop and he admitted that the accused had sold him the above two ornaments. This witness, PW-6, also said that he has made entries in his books of Accounts in this respect. A Panchnama is also drawn to this respect and a Punch, Dolatsinh Vajesinh Parmar, PW-7, at Exb. 33 has been examined. On the scrutiny of these evidence, it is urged that the ornaments which were borne by Ramila were discovered at the instance of the accused. It is pertinent to observe here that neither the nose ring, nor the wait band which were discovered at the instance of the accused bears any particular marks to identify that the ornaments were the same which were worn by Ramilaben. The witness admits that generally that kind of ornaments

are used by ladies of that area. The fact which leads us to disbelieve evidence of discovery is the evidence of Shantaben, PW-3, at Exb.25. This witness has said that the waistband of silver and the nose ring of gold belonged to her and were given to Ramila by her for the purpose of wearing the same in the marriage ceremony. In para 12 of her deposition and in her cross-examination, she has admitted that the waistband contained the name of "Gulabkohia", which was engraved on the waistband, meaning thereby that the waistband which was with Ramila contained a name engraved as "Gulabkohia". When we scrutinised the evidence of goldsmith and the Punch, we found that the waistband, which was discovered at the instance of the accused did not contain any such engraved name. Therefore, this evidence is not sufficient to establish that what was discovered at the instance of the accused from Dhansukhbhai Vallavdas, PW-6, was in possession of Ramila before her death and was robbed by the accused from her. Not only that, when appreciating the evidence of Dhansukhbhai Vallavdas, it is found that he has made a lame attempt to establish that the accused sold two ornaments to him and he has made relevant entries in his books. When he, PW-6, was made to stand for the cross-examination, it was clearly revealed that the books of Accounts were highly irregular and undoubtedly were not kept in order in ordinary course of business. For these two reasons, we are not inclined to believe the evidence of discovery of ornaments to convict the accused of the crime.

So far as the findings of blood marks in the house of the accused and quilt and the sheet are concerned, that alone is not sufficient enough to convict the accused for this grave crime. There are contradictions in this regard also. The Panchnama denotes some drops of blood were found, while witness says that there was pool of blood in the house of accused in periphery of 5 ft. Suffice to say that for this alone circumstance the accused cannot be saddled with the crime.

In the result, for the above stated reasons, we are unable to agree with the argument of the State that the acquittal order is required to be reversed. On the contrary, we do not see any reason to make an exception and interfere with the findings of acquittal arrived by the Learned Sessions Judge.

For the aforesaid reasons, this Appeal stands dismissed.

21-9-2000 (K. R. Vyas, J.)

(J. R. Vora, J.)

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